

1891-012 Chancery Causes: Louisville & Nashville Railroad Co] vs. Nimrod & Joe  
Lee Co.

Ely, Blankenship, Whitehead, Bowman, Eells, Haven

CA-Debt

T-Property

Transportation



To the Hon. N. S. K. Morrison, Judge of the  
Circuit Court of Lee County, Virginia;

Humbly complaining your orator, the  
Louisville and Nashville Railroad Com-  
pany, a corporation doing business under  
the laws of Virginia, would respectfully  
show unto your Honor that about the months  
of June and July, 1889, it had located and  
had commenced the construction of its Cum-  
berland Valley extension, passing through  
the County of Lee and on to its terminal  
at Prince George or Norton, in the county of  
Nise, a part of said line is located in the  
Poor Valley in said County of Lee and passes  
over the lands of one Amos Aoe; That before  
the work of construction of said road was  
begun over and upon said Aoe's Land your  
orator, after giving said Aoe legal notice  
thereof, had H. C. Joslyn, T. S. Ely and H. C. T.  
Richmond, Commissioners duly appointed by  
the County Court of Lee County for the purpose  
to meet upon the tract of land owned by said  
Aoe, to assess a just compensation to be paid  
to him for that part of his lands proposed to  
be taken by your orator for its purposes  
and damages to the residue of said tract  
beyond the peculiar benefits to be derived  
with respect to said residue from the con-  
struction of said Railroad over and upon



said lands. Your orator will now show your Honor that said Commissioners met on said land on the 24<sup>th</sup> day of October, 1889, and fixed \$311<sup>30</sup>/<sub>100</sub>, as the sum to be paid to said Aoe for the land taken and damages to the residue, all of of which is fully shown by said report, a copy of which is here filed as part hereof marked "Commissioners' Report."

At this meeting of said Commissioners on his lands the said Amos Aoe was present and was requested by said Commissioners and your orator's attorney to point out and show to said Commissioners all injury which the construction of said road would do to him and everything for which he claimed damages, and while he was very active in pointing out the injuries and disadvantages that said road would do and be to him he did not claim or show that a spring would be taken or that any part of his lands would by the construction of said road be deprived of water. Said Aoe was not satisfied with the sum assessed by said Commissioners and after they filed their report he filed exceptions thereto. He also instituted a suit, to wit: an action on the case for damages against your orator—a copy of said declaration is herewith filed marked "Declaration," and



prayed to be considered as part of this bill.  
Your orator will now show your Honor  
that afterwards and while the said suit was  
pending in the Circuit Court, and the Con-  
demnation proceedings in the County Court,  
an agreement was made to submit the whole  
matter arising under the proceedings in both  
causes to the arbitrament and award of A. B.  
Muncy, S. B. Orr and C. S. Woodward, and an  
order so submitting it was made by the  
County Court of said county in the con-  
demnation proceedings therein pending. A  
copy of said agreement is heretofore filed as part  
hereof marked "Agreement," and a copy  
of said order of the County Court is also  
filed marked "Order."

Your orator will now show your Honor  
that said arbitrators pursuant to said order  
and agreement of submission met on said land  
on the 9<sup>th</sup> day of May, 1890, to discharge and  
perform the duties thus imposed upon them,  
when the said Nimrod Roe introduced him-  
self as a witness and deposed and swore before  
said arbitrators that at a certain point desig-  
nated by him on said strip of land, which point  
was then covered up by said railroad embankment,  
that there was ~~an~~ excellent and valuable spring,  
worth at the least \$500.<sup>00</sup>/<sub>100</sub>, and that this spring  
was covered up by the embankment and wholly



ruined, that he was thus deprived of spring water, that his farm was otherwise cut off from water &c. This evidence was material, was acted upon by the arbitrators, and for the loss of said spring, and cutting him off from water, they gave said Noe \$500<sup>00</sup> their total award being \$900<sup>00</sup>, made up as follows: For the Land taken, \$232.50; for loss of spring, \$500<sup>00</sup>; for damage by throwing material outside of Right of way on said Noe's Land, \$167<sup>50</sup>/<sub>100</sub>; all of which fully appears from said award, a copy of which is here filed as part hereof marked "Award".

Your orator will now show your Honor that there was no spring on said Noe's Land at the point where he testified it was covered up by the embankment or at any other point on said strip of Land, and your orator files herewith as evidence of said fact the affidavit of A.C. Ely, who lived on said Land for eleven years, of C.C. Blankenship and J.M. Whitehead, who have long been acquainted with said Land; and of H.B. Cells and O. DeHaven, Engineers, all of whom declare under oath that there was no spring on said Right of Way and no spring at the point shown by said Noe to said arbitrators. Your orator avers that said Noe's statements in reference to said spring were false and fraudulent and made for



the purpose of increasing his said damages; that said statements were an imposition and a fraud on said commissioners and on your orator; that your orator did not then know and had no means of then finding out that said No's statements in regard to the existence of said spring were false, and did not find out the same until some time after said award was made. Your orator alleges that great injustice was done to it by said award; that the injustice thus done was caused by and resulted from the false evidence of the said Nimrod Noe. Your orator further alleges that every particle of the rock, dirt and other debris thrown on said No's land out side of said Right of Way was removed by the contractor who did the grading of said road for your orator, before the first day of Dec, 1890.

Your orator will now show your Honor that this award thus fraudulently obtained was confirmed by an order of the Circuit Court of Lee County at its Dec. Term, 1890, and by an order of the County Court at its Jan. Term, 1891, that an execution has issued from the clerk's office of the Circuit Court for the full amount of said judgment, to wit: for the sum of \$900.<sup>00</sup>/<sub>100</sub>, and



# Costs ~~and~~ ~~labor~~ of the said Soc, notwithstanding the facts that the matter is before a Commissioner appointed for the purpose by the county court of said county to ascertain who is entitled to said money, and in what proportions, and notwithstanding the further fact that your orator had paid into the county court of Lee County \$311<sup>20</sup>/<sub>100</sub>, the amount assessed by the commissioners H. C. Joslyn, T. B. Ely and W. C. T. Richmond, which money was paid to J. R. Gibson, clerk of said court on the day of Dec, 1890, and is still in his hands subject to the order of the county court of said county when said Commissioner determines who is entitled to it.

Now the object of this bill is to have said fraudulent award set aside, vacated and annulled and the report of the first Commissioners confirmed, or new commissioners appointed to make a new assessment, and to have the said Soc enjoined and inhibited from collecting the said judgment of the Circuit Court based upon said fraudulent award &c. And being without adequate remedy at law and reliefable only in a court of equity, which has cognizance of all frauds, Your



orator prays your Honor to grant  
it proper relief; to this end. Nimrod  
Aoe is made the party defendant to  
this bill, and your orator prays that  
he may be required to answer the same,  
but an answer under oath is expressly  
waived, and upon a final hearing that  
said award and the judgment thereon be  
vacated, annulled and set aside; that  
the said Aoe be enjoined and inhibited  
from collecting said judgment or suing  
out an execution thereon until your  
Honor shall finally pass upon the  
validity <sup>of said</sup> award; and if mistaken in this,  
then that he be enjoined from issuing  
an execution or collecting said judgment  
until it is ascertained to whom the money  
is due; that said execution be made  
subject to a credit of said sum of \$311<sup>20</sup>/<sub>100</sub>,  
the same being the sum now in the hands  
of the Clerk of the County Court of said  
County. And for full and perfect  
general relief may S.p.a. issue &c.

Louisville + Nashville R.R. Co  
by C. T. Duncan, atty.



L. & A. R. R. Co.

June 7, 1891

vs { Bill in Chancery.

Stimrod Stoe.

Deft  
7.93  
50  
L.D. 3.00  
Court 1.10  
\$12.53

Inspection granted pursuant  
to the prayer of the bill  
injoining the deft. & all  
others from proceeding  
to collect the judgment  
refered to till the further  
order of the court.

But this inspection will  
not become operative till  
the defts or some one  
for it execute & acknowl-  
edge a bond in stipendity  
of \$2000.<sup>00</sup>/<sub>100</sub> Two thousand dollars  
with good security before  
the clerk of this court  
conditioned as the law  
requires, & to pay all  
damages occasioned  
by this inspection.

To the clerk of the } H. Z. K. Morrison  
Circuit Court of } March 4<sup>th</sup> 1891  
Lee County Va. }

1891 March Term Court

" Aug. Term 1891  
Deft. Stoe filed with  
Cause is continued.

Deft. Morrison  
L. 2.15  
J.D. 2.25  
Court 3.00  
A 15.00  
\$22.40

Virginia Scott County Circuit Court Clerk's  
Office,  
This day W. S. Matthews made oath before  
me that the facts as stated in the within bill  
are true in as far as they depend upon his  
own knowledge, and in as far as they  
depend upon information derived from others  
he believes them to be true.  
Witnesses my hand this 4 day of May. 1891  
J. O. McCarroll Clerk



To the Hon. A. S. K. Morrison  
Judge of the Circuit Court of Lee  
County Virginia:

The Demurrer and Answer  
of Amos Hobbs, to a bill filed  
in this Hon Court against him  
by the Louisville and Nashville  
Railroad Company are in conser-  
ation, having an office and doing  
business in the State of Virginia.

It is true the plff has its  
line of Railroad in over and  
through the defendant's lands in the  
Poor Valley, but it is not true that  
the plff gave this defendant any  
legal notice of the time of the meet-  
ing of the so called Commissioners,  
H. C. Joslyn J. S. Ely and H. C. J. Rich-  
mond, styled by the plff Commis-  
sioners. But upon the contrary  
your Respondent is advised that  
the whole proceeding is null &  
void ab initio. At the time of  
the appointment of said so called  
Commissioners in 1889, and at the  
time of the giving of said notice  
viz: Oct 11<sup>th</sup> 1889. The then Judge of the  
County Court the Hon. C. J. Duncan  
was the attorney for said plaintiff.



Company, gave the notice for the meeting as shown upon its face served the same on this respondent, and appeared upon the ground and wrote the report, for said so called Board of Commissioners, he was therefore Judge and appointed them; He was Counsel and wrote the notice and report and Sheriff & served it. And then the same was made returnable before his Court for Confirmation. Under these circumstances your respondent acting under legal advice, disregarded the acts of this wholly illegal proceeding, and brought a suit for the very serious damages then being done him by the said Company. It is true that said Board and Counsel did on Oct-24<sup>th</sup> meet on respondent's land and pretend to assess the damages thereon, the amt \$311.29 would be ludicrous if it was not asserted with so much solemnity and gravity.

This amount meagre as it was was not paid into Court, when this respondent brought his suit



1  
but the void proceedings were still  
pending in the County Court where  
no action could be taken, before the  
Judge who was Counsel, and in this  
state of affairs, your respondent  
entered into the written agreement  
dated April 9<sup>th</sup> 1890, signed by the  
said Duncan, then the Judge as atty  
for said road.

Pursuant to this agreement the  
arbitrators selected, A. B. Muncy  
D. B. Orr and E. L. Woodward, met  
on the premises on the 9<sup>th</sup> day of  
May 1890, to view the same and  
ascertain the damages, done this  
respondent, the said arbitrators  
sat on the Rail road dump near  
the spring spoken of, heard the  
witnesses, and arguments of Counsel  
the said atty and Judge argued the  
case for the Rail road and there was  
then present, the agent of the road  
whose name is not now known—  
The Contractor Col. Harmon whose  
laborers filled up the spring &  
graded the road at this point was  
at times present, but was not  
called by the plff as to the spring  
which he could easily have been.



And after all the proofs had been produced the said Arbitrators retired and after some deliberation rendered verbally an award in favor of this respondent for \$1300.<sup>00</sup> damages. And when an attempt was made to write out the same, a disagreement arose, and the arbitrators were to meet the next day at the town of Jonesville and write out the same. They did meet, but your respondent nor his Counsel was not present, but Judge Duncan, appeared before the Arbitrators and resisted the item of \$400. allowed for the fencing which this respondent would have to do - and the arbitrators struck it out and made their award read \$900.<sup>00</sup> They wrote out their action and strange to say signed it as Commissioners - A Copy of this paper together with the exceptions thereon endorsed will be found herewith filed as part hereof, marked "B"

By which it will be seen the paper bears date as of 9<sup>th</sup> day of May 1890, but in fact it was not seen or known to your respondent



until the day it was filed Aug.  
2<sup>d</sup> 1890. And on the 6<sup>th</sup> day of the  
same month your respondent filed  
exceptions thereto, No from 1 to 7  
both inclusive - And the plff Com-  
pany nistat date, but believed  
to be on the same or the following day  
filed four exceptions thereto. The 3<sup>d</sup> of  
which exceptions became the Com mis-  
sioners were mistaken as to the de-  
struction of the spring &c. These excep-  
tions were entered at the August  
Term of this Hon. Court for the  
year 1890 or before. At that time  
the plff required a rule to issue to  
show cause why the award should  
not be entered up, or at least  
would not appear & waive said  
rule - It did issue and at the  
December Term 1890, the cause came  
on to be heard upon said rule  
and award & exceptions to said  
award, by each party of which  
the spring was one, but there was  
no proof to sustain it, although the  
plff had had from August 6<sup>th</sup>  
to Dec. to produce evidence of the  
mistake if he had, had any  
Then on the 12<sup>th</sup> of Dec. after



The  
Case had been decided and judgment rendered for \$900<sup>00</sup> pursuant to the report or award as the paper may be termed the plff goes to work to take the affidavits of persons well known to it all the time - It is true in the first meeting herein spoken of, the atty for the plff came & requested this respondent to show & point out his damages but, he refused to have any part in a matter concluded in such a sneaky and one sided way, he was expected to respect a tribunal selected by the Council of the road, and if the tribunal did not do his bidding there as a Court the Council could make their regard his judgment, as apropos to this your respondent is informed that not a single report made by these so styled genl. Commissioners have stood the test of litigation but in every instance where objection has been made, such reports have been set aside and higher damages awarded.

It is true your respondent as a



1  
witness before said arbitrators  
did swear and as a witness point  
cut where his spring was de-  
stroyed, and covered up by said rail-  
road dump, he now swears that  
what he then said was true &  
his spring is destroyed, the only one  
near his dwelling & out of which  
he has for many years used &  
enjoyed the water supply therefrom  
now so unjustly destroyed and so  
laboriously sought to be covered  
up on paper as well as by the  
embankment. Your respondent  
is informed and believes that one  
of said arbitrators could then &  
will now testify that he has often  
seen & drank out of said spring  
before its destruction, and he will  
be enabled to call such members  
to testify of this fact, that the  
plff if it had any soul or de-  
cency it would hide itself away  
for very shame's sake. Not con-  
tent to invade witness' law and  
ruin the property of an old and  
feble man it seeks to cast an  
imputation upon his Honor and  
and good name, but in this.



it will signally fail.

Now if the plff can show that there was no spring at the point designated by him it will have to resort to falsehood to do so, for it was there or was ruined as before-stated.

Besides, if such were the fact that there was none the plff had ample time and opportunity to show it under his exceptions from Aug. until Dec. 1890 and the matter being then fully heard and adjudicated it is too late now, by way of injection to complain.

This respondent denies that his statements in reference to said spring are false, but he re-asserts them to be true, and if the plff will remove the embankment at the point he designated the spring will show its affluence in the face, and respondent challenges the plff to their most effectual weapon of battle as to who is right or wrong.

The plff says it did not find out the same (was false) until some time after said award was made, but respondent submits that if it did



Know of this, its supposed state  
of facts before the final action  
of the Court, or could have by rea-  
sonable diligence ~~been~~ found it  
out, and did not do so then it is  
too late now and the plff is forever  
concluded. It would seem from  
the papers in the case the plff  
in the case does not even now  
know anything about it - no of-  
ficer or manager of the Company  
takes any part but its atty seems  
the only ones who knew the facts.

It, the plff, says great in-  
justice has been done it; how this  
respondent can not see, it has  
escaped with \$400.00 less than  
three men, in part of it, can  
choosing say it has done to this  
respondent; and this respondent  
feels & knows the amt given to  
him is but a stunted compensation  
for the damage & injury received.

Now does this respondent believe  
that the said Company files this  
bill for any injury done it but  
out of hatred and ill will towards  
this respondent, because he would  
not bow <sup>down</sup> in humbleness at it



mighty approach, and give to its  
obstinate dictation, and take only  
whatever it in its imperial way  
chose to give him - He did not  
he admit, full down & worship  
this great Corporation, that seeks  
like some great serpent to enwrap  
the small atoms along its devious  
course - He has had resort to the  
law of the land to enforce his  
rights, and by their decision he will  
stand or fall - The remainder of his  
small estate, and his declining years  
he will if necessary, heap upon  
the funeral pile of his rights and  
freely consume them or have and  
receive from this giant trespasser  
his just and honest dues. And  
having now fully answered so far  
as he can understand the plffs alle-  
gations, he deny all statements not  
herein specifically admitted or  
denied, and pray hence to be dis-  
missed with his costs.

A. L. Prentiss

For Deft.



1  
Virginia Lee County, To-wit:  
~~Attest, day~~ Minrod Stone made  
oath before me, a Notary Public for  
the County & State aforesaid, that the  
facts stated in the annex above are  
true in so far as they depend upon  
his own knowledge, and in so far  
as they depend upon information derived  
from others he believes them to be  
true. Given under my hand, this  
27<sup>th</sup> day of August 1891.  
D. C. Swell N.P.



<sup>LP</sup>  
Miner's Map

also } Answer

L. & A. R. R. Co

Filed Sept 2<sup>nd</sup> 1891  
J. A. Hyatt



Exhibit to the Report of  
the  
Grand Jury.

This case  
being one that seems to be well  
known to the Court and to the  
public, the answer of the de-  
fendant exhibits, filed and  
replied to, the deposition  
of witnesses and was argued by  
Counsel. The Court has  
heard and for reasons of  
justice to the Court, the sug-  
gestion heretofore made in this  
case, it is suggested and  
advised that the suggestion be  
to be considered in this case  
the, and the same is hereby dis-  
posed - and that the defendant  
be allowed to file this  
case in the Court and the  
same be considered from the  
Court.



Timothy H. H.

John D. H.  
H. H. H.

L. H. R. H. H.

Dec. 5, 1891

John D. H.

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John D. H.

Timothy H. H.

Dec. 4, 1891

H. H. H.



Virginia.

At a county court continued and held  
for Lee County at the court-house  
thereof, On Saturday Jan'y 10<sup>th</sup> 1891.

Louisville & Nashville R.R. Co. Peff. on a pro-  
ceeding of  
vs. Deft Condemnation  
Samuel Roe  
ion, referred to Arbitrators.

This day came again the parties by  
their attorneys, and A.B. Munsey, S.B.  
Orr & E. S. Woodward the arbitrators  
having made and returned their  
award, by consent of parties the  
said award is made the judgement  
of the court, and is in the words and  
figures following to wit: To the Hon-  
orable James W. Orr Judge of the county  
court of Lee County Virginia, We A.B.  
Munsey, Simpson B. Orr, and Elliott  
S. Woodward, commissioners duly ap-  
pointed and qualified hereby certify  
that on the 9<sup>th</sup> day of May 1890. we  
met together on the land of Samuel  
Roe who is tenant and owner of the  
land proposed to be taken by the  
Louisville and Nashville Rail road  
Company for its purposes and there  
and there described to us as follows,  
To wit: a strip of land bounded



and described as follows. Beginning at a point in the center line of the Cumberland Valley branch of the Louisville and Nashville Railroad as now located where said center line crosses the division line of the lands of John Pennington and the said Nimrod Chae, the bearing of which line is  $S 21^{\circ} 50' W.$  thence by tangent bearing  $N 78^{\circ} W.$  and with a width of 80 feet on each side of said center line for a distance of 678 feet, thence with a width of 80 feet on the south and 60 feet on the north side of said center line continuing said tangent, and with a width of 80 feet on each side of said center line for a distance of 2604 feet to a line of the lands of Wm. H. Chae the bearing of which line is  $S 4^{\circ} 50' W.$  containing nine and  $\frac{3}{100}$  acres be the same more or less, and upon a view of the land aforesaid and upon such evidence as was before us, we ascertained that for said land and for the damage to the residue of the tract beyond the pecuniary benefits to be derived in respect to such residue from the work to be



constructed, to wit: - The construction and  
operation of the Cumberland Valley branch  
of the Louisville & Nashville Rail Road  
over said land nine hundred dollars  
will be a just compensation as fol-  
lows, Value of land taken \$232.50 In-  
convenience from being cut off from  
water and destruction of spring \$500.00  
Damages to land from rock dirt &c being  
thereon upon the land outside of right  
of way and expense of clearing of by said  
road \$167.50 making in all the total of  
nine hundred dollars, It is under-  
stood that the Railroad company  
is to fence the right of way on  
both sides and put up all cattle  
guards &c at its own expense as  
the law directs, comrs. 2 days  
each @ \$2.50 = 5.00

A. B. Munsey  
S. B. Orr.  
E. S. Woodward } Commissioners

And it is further considered by the court  
that the defendant recover against  
the plaintiff his costs by him in this  
behalf expended, And it is ordered that  
S. B. Sewell who is hereby appointed  
a commissioner for the purpose do as-  
certain and report to this court



what persons are entitled to said fund.  
and in what proportions, and until the  
coming in of said commissioners report  
the cause is continued.

Attest Teste John R. Gibson clerk.

L. V. A. R. R. Co

vs } copy of Order awarding  
} firming Award  
} of arbitrators  
Kamrod Staer.



Virginia

At a county court convened and held for Lee  
county at the court-house thereof. On Wed-  
nesday April 9<sup>th</sup> 1890

Louisville & Nashville R.R. Co. Off.

vs  
Winrod Stoe                      Deft. Comrs. } on report of

This day came the parties by their at-  
torneys and it is agreed that where  
as the plaintiffs have entered active-  
ly upon the construction of its road  
way over and through the farm  
lands & premises of the defendant,  
and have heretofore convened the  
commissioners, appointed by the county  
court, to assess damages & condemn  
right of way on said lands which  
report is now pending with exceptions  
thereto in the county court of Lee  
county and whereas the said Stoe  
has heretofore instituted suit in  
the circuit court of this county an  
action on the lease for damages done  
said premises as he alleges, now  
in order to settle finally how  
much damage said Stoe is entitled  
to by reason of the construction of  
said Railroad to the residue of the  
tract over and above any peculiar



advantages to be derived by him from the construction of said road as well as a just compensation for a strip of land over said farm 100 feet wide and also the damages done by said company or its employees to said land by throwing dirt rock & gravel or the like upon the premises outside the said strip of 100 feet. It is further agreed that A. B. Mursey, E. S. Woodward and S. B. Orr who are hereby mutually selected for the purpose, shall go upon said land and after viewing the same & hearing such proof as either party may adduce assess and fix the amount said toe shall receive and said road pay by reason of the premises.

And such award made by them or a majority of them shall fix said liability and be entered up as the judgment of the court in each case & the report of the former commissioners condemning said right of way shall be confirmed when when the same shall be paid and the cause in the circuit court be disposed of there



according to the award made,  
and the cause is continued.

Attest

Teste John R. Gibson clk.



L.Vt. R.R. Co  
vs } copy of  
Jorden  
Vincent Noel.



The depositions of A. C. Ely and  
Charles C. Plantership

taken on the 13<sup>th</sup> day of November 1891. at the  
office of C. T. Duncan in Jonesville Virginia  
before me H. C. Jolly a Justice of Lee  
County Virginia, pursuant to notice here  
to attached which depositions are intended  
to be read as evidence on behalf of  
the Complainant in a certain suit in  
Chancery now pending in the Circuit  
Court of Lee County Virginia in which  
the Louisville and Nashville Railroad  
Company is Complainant and Turnroad  
Koe is Defendant.

Present C. T. Duncan attorney for Complainant  
and the Defendant Turnroad Koe and  
his counsel A. L. Pridemore.

A. C. Ely a witness of lawful age being  
first duly sworn deposes & says

1 Question by Complainant. Please state your  
age residence and occupation

Answer I am 67 years of age. Lee County Va.  
and by occupation a Farmer.

2 Question. Are you acquainted with  
the tract of land on which Turnroad Koe  
now resides and through which the Louis-  
ville and Nashville Railroad Company  
has constructed its road if so please  
state how long you have known it.



Answer. I am acquainted with the tract of land spoken of. My father owned that tract of land and lived on it when I was 11 or 12. Years old. We lived on the land about Eleven years. My father opened the land on the most of it

3 question Please state if you are acquainted with the strip of land on which the Railroad is now constructed through said farm.

Answer. I am

4 question State whether or not there was ever within your knowledge a spring on said strip of land at or near where the Cranks Gap road crosses said Railroad, or at any other point or place on said Right of way strip?

Answer. I never knew of any spring where the Cranks Gap road crosses the Railroad. I knew of some springs down the Creek in the banks of the Creek I don't know whether these springs are on the right of way or not.

5 question. Have you been shown the point where Mr. Fox claims a spring was covered up by the Railroad embankment.

Ans. I never was shown. but I went



to the place with others, and looked and hunted but saw no spring and decided in my mind that I never saw any spring there or knew of any.  
6 question. Was the land at and near the point where said road crosses the Railroad cleared up by your father and yourself while you lived on said land.

Answer

We cleared up the bottom, and run a fence along the Cranks Gap Road on the west side.

7 question. If there had been a spring at this place would you not have known it living there as long as you did

Answer.

I never knew any spring there and I expect I have been on every foot of it, I hunted a great deal before it was cleared out.

Verap Examined.

Before the land was cleared, at the point where the rail road crosses the Cranks Gap Road what was the character of the land dry or gravelly or swampy or wet?

Answer.

Ans 2.

I think at that time it was dry. At the point above mentioned was there not, some limestone rocks sticking up out of the ground in a rough & uneven manner?



Answer. If there was any lime stone rocks there  
I never saw them that I remember  
of now.

Quest 3- What is the character of the ground now  
at the point mentioned is it dry or  
wet land?

Answer. I don't know how it is now.

Quest 4 How is it generally, is it what you  
call wet or dry land?

Answer. I call it Swampy land <sup>above and below it</sup> some wet  
and some dry. Just where the road  
crosses I don't know how it is at  
the present time.

Answer. Some of the land above it is wet land  
and some below it is wet, right where  
the road crosses now, or when I was  
lost there it was dry.

Quest 5. Take a space of 20 yards square  
around where the County road  
is crossed by the rail road  
what was the character of the  
ground during your acquaintance  
with it - would you say it  
was wet, dry, swampy,  
marshy? describe it?

Answer. There was a drain run across it  
during a wet spell while we lived there.  
it was sort of rough ground, some.



of it was wet and some dry within twenty yards square, when we lived there.

Quest 6 Did you ever know of spring in the bottom near the rail road dump about 40 yards west from the rail road crossing above mentioned?

Answer. I don't know of such a spring.

Quest 7 Was you as well acquainted with this spot as the one at the crossing?

Answer. When we left there, I knew it all.

Quest 8 Did you ever know of a spring or water, boiling up & out of the ground in the Rail-road cut east of the crossing spoken of?

Answer. Not when we lived there.

Quest 9 In making said cut was there not a spring or stream of water struck by the hands on the rail road & does not a stream of water now run out of said cut or generally do so?

Answer. I was not there when the cut was made. but I don't know of any spring of water running out there.



Quest 10 You speak of a time when you was on the ground with Mr. Goins, when was that and who got you to go - and what was it for?

Answer. I was there Dec 12<sup>th</sup> 1890. Mr. Goins got me to go. I went to look and see if I had ever known of a Spring where the Holan road crossed the rail road.

Quest 11 Was Mr. Roe there?

Answer I did not see him.

Quest 12 Did you or any of the party send for him or ask him to come & show where he claimed the Spring to be?

Answer. If they did, I knew nothing of it.

Quest 13 Did any one pay you for your trouble & time if so who and how much?

Answer Mr. Goins paid me two dollars.

Quest 14 How far did you have to go and how long was you engaged?

Answer. I went about six or seven miles, we were engaged seven or eight hours.

Quest 15 Were you at the time you leased these acquainted with the whole farm now owned by Mr. Roe?



Answer. I was acquainted with what Mr. Roe now owns.

Quest 16 Did you then or since ever know of a good boiling spring on the lower end of the place now ~~owned~~ by Mr. Roe, one on the upper end & one near the middle of the bottom none of which are on the Creek bank?

Answer. I knew of several little springs along the bottom, at the heads of little creeks. There was one large spring above the soil-road that comes out of the side of the Mountain, north of the R.R. We claimed it then - but I don't know who it belongs to now.

Quest 17 How, after have you ever examined the place where Mr. Roe claims the spring to be since you moved away from the place until called on by Mr. Gorins to do so?

Answer. I never have examined it any time since we moved away until called upon by Mr. Gorins - I have passed along the road but never noticed it.

Quest 18 Do I then understand you to say that Mr. Roe, did <sup>not</sup> open and use water from a spring



at or near where the road or  
Railroad crosses each other and  
now covered up by the rail-  
road Embankment. or do you  
only say you never knew of  
such a Spring?

Answer. I cannot say what Mr. Nae' done  
but I never knew of any Spring there.

Question. Is it not a fact in this  
mountain country that Springs  
are often found & opened at  
small depths in the ground  
where they at first did not  
appear?

Answer. I believe that is often the case.  
Examined

1 Question by Complainant. What is the char-  
acter of the land just east of the Crooks Prop.  
road. Wet or dry. at and along the Railroad.

Answer. When we lived there east of the  
Crooks Prop road. was dry until you  
got down into the bottom <sup>on the south side of R.R.</sup> then it was  
wet.

Question by same. Were you influenced by the  
Two dollars paid you by Mr. Gains to speak  
anything but the truth.

Answer. No Sir:

Witness Claims  
1 day \$5.00  
Pd. by Plffs.  
And further this deponent Swears not,  
Arthur. H. Ely.



C. C. Blankenship another witness of lawful age being first duly sworn deposes and says.

1 question, by complainant. State your age, occupation and residence

Answer. I am 71 years of age, a farmer by occupation, and live in Lee Co Va.

2 question. Are you acquainted with the land on which Nimrod Noe now lives and through which the Louisville and Nashville Railroad now runs.

Answer. I am acquainted with said land, and have known it ever since I was a small boy. My father entered this land

3. question. Do you know the point or place where Nimrod Noe claimed before the Arbitrators Munsey Orr. & Woodward a spring had been covered up or destroyed in the construction of the railroad?

Answer. Mr Goins showed me the place where <sup>he says</sup> ~~the~~ Noe claimed the spring was said to be. I never heard Mr Noe say anything about it.

4 question. Was the point shown you by Mr Goins at or near where the Hootan or Cranberry Creek crosses the Railroad.

Answer. It was just where the Cranberry Creek road and the railroad cross each other,



5 question. State whether or not you  
ever saw or knew a spring to be at or  
near said place.

Answer. I never saw a spring at that point  
that I have any recollection of.

6. question by same. State whether or not  
you passed there frequently and had  
opportunity of seeing a spring there if  
there had been one?

Answer. I passed frequently during my boyhood  
and ever since occasionally. and had  
the opportunity of seeing a spring there  
if one had been there - but do not  
remember of having seen one.

7 question. Where does Mr Roe usually  
get the water he uses for family  
purposes.

Answer. I cannot tell.

Verap examined.

Do I understand you to  
say that Mr Roe did not  
have a spring that he used  
water out of and was covered  
up by the rail road dump  
or do I understand you to  
say only, that if there is or  
was a spring there that you  
never saw it?

Answer. I mean to say that if there ever was



a Spring there I never knew it.  
Quest 2 Do you remember preaching  
the funeral of one of Mr  
Boes daughters several years  
ago in warm weather and the  
old man bringing you some  
water from near the place  
you describe and saying to  
him "This is good water"?

Answer. I do remember of preaching the funeral.  
but dont remember anything about  
his bringing the water or of having  
made any remark about it.

Quest 3 What is the general character  
of the ground at the point you  
describe, is it was it dry or  
wet or marshy describe it for  
say 20 yards around the point?

Answer The point designated by Mr Boes. is  
near by where a stream comes down  
from the Mountain, and I think the  
stream on the North side of the R.R.  
is a little east of the Granks Gap  
road <sup>about</sup> where it and the Rail road  
crosses, this stream that I speak of  
would run over and on said land  
near to the point spoken of and in  
the low places - would cause it to  
be wet or marshy. Though I have



seen the ground in dry Times perfectly dry.

Quest 4 Is it not a fact, that Springs in this Country are often found at short depths below the surface, and might not such a Spring have opened by Mr. Nae at the point claimed by him without your knowledge of the fact?

Answer. I do know of Springs breaking out at places where they were not known before, I know of such a one at my fathers old place and in fact there are two or three such on my fathers old place, and such a Spring might have been opened by Mr. Nae without my knowledge I have not been about Mr. Nae's house but very little for eight or ten years. And further this deponent saith not.

C. C. Blankenship

Witness claims  
1 doz 50 cts  
Paid by Bluffs

Virginia Lee County Court.

J. Henry C. Goslyn a Justice of the Peace for the said County, do hereby Certify, that the foregoing depositions of A. C. Gley and C. C. Blankenship



were duly Taken, sworn to and  
Subscribed before me, at the time  
and place mentioned in the Caption  
of the same. Given under my  
hand, this 13<sup>th</sup> day of November  
1891. Henry C. Joslyn J.P.



Louisville - Nashville  
vs. } R.R. Company  
depositions  
Nimrod Stoe

The depositions of  
A. C. Gley and  
L. C. Blankenship.

Read from J. P. Book.  
shown taken and filed  
Nov. 21<sup>st</sup> 1881

J. P. Hyatt

J. P. Fee \$3.00



The deposition of John M Whitcomb taken pursuant to agreement at the office of C. T. Sweeney in Louisville 7<sup>th</sup> on the 16<sup>th</sup> day of November 1891. in a certain Chancery Cause now pending in the Circuit Court of Lee County Virginia in which the Louisville and Nashville Railroad Company is Complainant and Nimrod Cox is Defendant. Said deposition is taken before S. C. Sewell a Notary Public, by counsel Present C. T. Sweeney Atty for Complainant S. C. Sewell acting for A. L. Pridemore Atty Defendant

J. M. Whitcomb a witness of lawful age being first duly sworn deposes and says.

1 Question. State your age residence and occupation

Ans 58 years old, residence Lee County Va occupation a Physician & farmer

2 Question. Are you acquainted with the tract of land on which Nimrod Cox now lives, if so how long have you known it.

Ans I am pretty well acquainted with it. Have known it for 30 years. Since 1862 I have known it better than I did before that time

3 Question. Have you been on said tract of land since the Louisville & Nashville Railroad Company commenced the construction of its road over and upon said land and if so do you know the strip of



land acquired by said Company for its  
Right of Way

Ans.

I have been over said track  
of land frequently since said  
Company began its survey  
and I ~~there~~ am very well  
acquainted with said right of  
way strip

4 Question Please state if you ever saw or had  
any knowledge of a spring on said Right  
of way strip at or near the point where  
the Railroad crosses the Horlan or Brant's  
Gap road?

Ans

I never saw anything like a  
spring along there. Some 25 or 30  
yards south east of where said  
roads cross each other there is  
now a small spring running  
out of the foot of the bank.  
I don't think this spring is on  
the right of way -

5 Question Did you ever have occasion  
to look carefully for a spring at or  
near the place where said Horlan or  
Brant's Gap road and the Railroad  
cross each other, if so state the time  
and circumstances?

Yes; I hunted for water at & near  
said crossing in the fall of the



year 1862. We come up the bottom from the west, looking carefully for water to drink till we got to the lane & then turned up the lane to the mountain by the Haulan road, but we did not examine East of the road. I had been captured by East Tennessee Union soldiers, & we were very much wearied & thirsty. We found no water that we could drink till we went up the lane north of the railroad some four or five hundred yards from the same. When <sup>we</sup> did find water they crowded over each other & I got out & escaped.

- 6 Question. Wanting water as badly as you then did, and searching for it as you then were. Do you think if there had been a spring at the place where Mr. Fox now claims one was covered up and destroyed by the Railroad without want you would have found it or not.

Ans.

7

I think we would.  
Question by same. Did you ever hear of a spring at that place until Mr. Fox set up a claim to it before the Arbitrators



I never did.

Q. Question. Have you examined for salt spring since Mr. Lee set up said claim if so did you find it or any sign of it.

Ans - In riding along I have looked over said land & examined for a spring, but found none, & no sign of what I would call a spring, but some boggy land ~~near~~ the west side of the crossing.  
Cross Examined -

1st question.

Please state the character of the land at & near the crossing of the Harlan road & railroad.

Answer. On the East side of the Harlan road the right of way runs over a rather high dry land. at the west side of the Harlan road there runs down from the mountain a small drain and west of this drain as above stated the land is boggy or marshy to a small extent. on the east of Harlan road and south of the railroad, at the foot of the hill there runs out a small spring this is the spring above spoken of being some 25 or 30 yds from the crossing.

Ques 2. Have you or not been shown the



exact spot where Mr. Noe claims his spring has been covered up by the railroad dump; if so where, by whom.

Ans. I can't say that I have been shown the exact spot where Mr. Noe claims the spring was destroyed or covered up. J. L. Coomer showed me a place where he said Noe claimed it. but Mr. Noe nor none of his family ever showed me the place.

Question 3. Can you say that Mr. Noe did not have a spring that he used water from & was covered up by the railroad dump, or do you say only that if there was a spring there that you never knew of it?

Ans. I can say only that if there was a spring there I never saw it or ~~heard of~~ or knew it.

Question 4. What is the nature of your knowledge of the land just east of & about the railroad & Mountain road crossing; Has it been as only a passer by, or have you used & occupied said land?

Ans. My knowledge is only that of a passer I never occupied any of said land.



after said spring was spoken of which  
before the arbitrators assessed the damages  
as I now remember I heard the spring talked  
of. That Mr. Noe claimed a spring to be in  
Right of way Through his land. and in pass-  
ing by I noticed for one several times  
but saw none ~~in said~~ Right of way

Ques. 5 In your hunting for water in  
1862 did you examine for  
same on the east of the mountain  
road near the railroad crossing

Ans. I did not go east of the lane.

Ques. 6 Along the right of way at & near  
the crossing of the mountain road  
might not Mr. Noe have open-  
ed up a spring since 1862 that  
would have escaped your attention  
in passing by & ~~found~~ ~~that~~ ~~you~~  
~~found~~ ~~it~~ ~~up~~ ~~but~~ ~~it~~ ~~was~~ ~~found~~

and is it not a fact that  
springs are found & opened up  
at a short depth below the surface  
in this country.

Answer. If he had opened up a spring at that  
point I think I would have discovered it  
It is a fact That springs are frequent-  
ly opened out at a small depth from  
the surface in this country where they  
had not been known before



Re-examined

1 Question If there had been a spring  
on the east side of the Horem road at  
the right of way at ~~the~~ near said crossing  
could it or some sign of it have escaped  
your attention and notice.

Ans.

I think not.

And further this Depoant avers not.

J. M. Whitehead.

Virginia Lee County To-wit:

D. S. C. Sewell a Notary Public for the  
County and State aforesaid do hereby  
Certify that the foregoing deposition of  
John M. Whitehead, was duly taken,  
Sworn to and Subscribed before me, at  
the time and place mentioned in the  
Caption of the Same.

Given under my hand this 16<sup>th</sup> day  
of November 1891.

D. C. Sewell N. P.



L. & N. R. R. Co.  
No. 3 Deposition  
Nimrod Star

Deposition of  
J. M. Whitehead

Received from Attorney  
George Nelson taken  
and filed Jan 21/89  
J. H. Pratt



The depositions of Nimrod Nae  
Frank Bowman. David R. Nae  
A. W. Nae W. Monroe ~~W.~~ Nae and  
Joseph Bowman and ~~Nimrod~~  
~~Nae~~.

taken on the 20<sup>th</sup> day of November  
1891. at the Store-house of A. W.  
Nae & Bro in Lee County Virginia  
pursuant to agreement, which  
depositions are intended to be  
read as evidence on behalf of  
the defendant in a certain suit  
in chancery now pending in the  
Circuit Court of Lee County Virginia  
in which the Louisville and  
Nashville Railroad Company  
is Complainant and Nimrod Nae  
is defendant.

Present Nimrod Nae the  
defendant.

David R. Nae a witness of lawful  
age being first duly sworn deposes  
as follows:

1 Question: State your age, occupation  
& residence:

Answer

I am 27 years of age. a Farmer  
by occupation, and reside in Lee Co Va.

2

Question: Are you acquainted with the  
tract of land on which Nimrod Nae



now under & through which the  
Louisville & Nashville Railroad  
Company has constructed its road;  
if so state how long you have  
known it & how?

Answer I am acquainted with the land, have  
known it and worked on it ever  
since I can remember. I have  
been over it all, worked on  
it continually and think I know  
all about it.

3 - Question: Are you acquainted with  
the right-of-way strip on which the  
Louisville & Nashville Railroad is now  
built, if so please state whether  
or not to your certain knowledge  
there were any springs on  
said right of way & if so, state  
all about them.

Answer I know the Railroad strip well,  
there was certainly two springs on  
the right of way. I have used  
water and carried water from the  
one near the crossing of the  
banks fork road and the  
Railroad Crossing ever since  
I can remember. it was a good  
hard spring. The spring at the



Witness  
Claims 50

Crossing is covered up by the railroad, dump, the other one is there yet, and is a small spring about 200 yards east from the crossing. in a small cut of about two feet.

And further this deponent with not.

D. E. Mc

Frank Bowman another witness of lawful age being first duly sworn deposes as follows.

Question 1 - Are you acquainted with the track of land on which Minnerd McRae now resides & through which the Pioneer & Northern Railroad Company has constructed its road?

Answer I am well acquainted with said land, have lived upon it, and worked on it.

Question 2 Are you acquainted with the right of way strip through said land, if so please state whether you know or knew of any spring on same, & if so state all about them?

Answer I am acquainted with the right of way strip. I knew of one right at the or near the Crossing of the Crow's Gap road and the Railroad. I lived



on Mr. Nae's land about five years - and within 200 yards of the Crossing about Twelve months, and used water out of the spring at near the Crossing, and found it good Cold water. I have carried water from that spring to Mr. Nae's house and also to the fields when we were working near the spring. I have known the place well for about 18 years, and have worked on the place off and on for all that time.

Quest 3- State your age, occupation, & residence?

Ans I am 32 years of age, a Farmer by occupation, and live in Lee County Virginia.

Witness Claims  
50.

And further this deponent with <sup>his</sup> ~~mark~~ Frank Bowman

W. M. Nae another witness of lawful age being duly sworn, deposes as follows:

Question 1<sup>st</sup> State your age, occupation, & residence?

Ans- I am 42 years old. Merchant and one of the firm of A. W. Nae & Bros and live in Lee County Virginia.



Quirk 2<sup>nd</sup> - Are you acquainted with the track of land on which Minnrod Noz now resides & through which the Louisville & Nashville Railroad Company has constructed its road, if so, how long?

Answer I am well acquainted with the land, have lived on it for 30 years, worked on it, used it in many ways

Question 3 - are you acquainted with the right-of-way strip through said land; & if so, do you know of any spring on same to your certain knowledge, & if so state the circumstances?

Answer I am acquainted with the right of way strip through said land. I do know of a spring on the right of way strip. Near the Crossing of the Branks Fork road, and the Railroad a little east of the same, I have carried water from that spring all the time I was on the place, and carried it all over the farm. I have taken a bucket frequently at 12 o'clock so that I could have a good cool drink <sup>while resting</sup> it was a good cool spring as there was on the farm.



Quest 4, What, if you know, has become of said Spring?

Answer I don't know what has become of the Spring. I suppose it was covered up by the Railroad dump - as I cannot find any trace of it since the railroad was built.

Witness

Cloins 50

And further this deponent says that:

W M Now

Joseph Bowman another witness of lawful age being duly sworn deposes as follows:

Question 1<sup>st</sup>, State your age, occupation & residence

Answer I am 39 years of age. a Farmer and live in Lee County Virginia.

Quest 2<sup>nd</sup> Are you acquainted with the track of land on which Minrod Noe now lives & through which the Louisville & Nashville railroad company has constructed its road, if so how long?

Answer. I have been acquainted with said farm about 25 years. I have worked on it about 18 years off and on.

Question 3<sup>rd</sup> are you acquainted with the right-of-way strip of the Louisville



& Nashville railroad Company through the  
said land; if so, please state if  
you know of a spring on said  
right-of-way to your certain knowledge  
& if so, state all about it?

Answer.

I am well acquainted with the right of  
way strip, and I knew of a spring  
a little to the east of the crossing  
of the Branks Sub road and the  
Railroad, I have carried water from  
it, to Mr. Stae's house - and to my  
own house when I lived near it.  
I lived within about 200 yards  
of it for 12 months and I have  
laid by the spring might near  
half of a day at a time and  
held the cold water on my tooth  
when I had the tooth-ache, it  
was a good Coal based spring.

Quest. 4 Have you been there recently, if so  
did you see the spring?

Answer

I have been there very recently. I live  
close by it now - about  $\frac{1}{4}$  mile  
from it. I have seen nothing of  
the spring since the coal road was  
built.

And further this witness soith not.

Joseph <sup>his</sup> Bowman  
Jurat.

witness  
claims 50



A. W. Noe. another witness of lawful age being duly sworn deposes as follows.

Quest 1. State your age, occupation & residence?

Answer. I am 44 years of age. I merchant one of the firm of A. W. Noe & Bro and I live in Lee County Virginia.

Quest 2. Are you acquainted with the tract of land on which Minard Noe now resides & through which the Louisville & Nashville Railroad Company has constructed its road, if so how long?

Answer. I am acquainted with the land, have known the land about 28 years. I have lived on the land and worked pretty well all over it.

Quest 3 Are you acquainted with the Louisville & Nashville right-of way through said land; if so state whether or not you know of a spring on said right-of-way or if so all about it?

Answer I am well acquainted with the location of the said right of way strip. I knew of a spring that was near the



Crossing of the branks gap road  
and the Rail road - a little east  
of the branks gap road but near  
to it. I have Corried and used  
water out of it, it was a good  
Cold Spring. I remember when the  
Spring Cleared out - and there was  
a board kept there for the purpose  
of getting drinking water when we  
worked near the Spring.

Witness claims And further this deponent saith not.

A. W. Kof

Timrod was another witness of  
lowful age being duly sworn  
deposes as follows.

Quest 1<sup>st</sup>. Please state whether Louisville &  
Nashville railroad has constructed  
its road through your land on  
which you reside, & if there was  
a spring on there right of way & if  
so what has become of it & all  
about it?

Answer. It has constructed its road through  
my land, there was a spring on  
the right of way as claimed by  
me before the arbitrators. I have  
used water out of that spring for  
25 or 30 years. it was good cold  
water, it was near the Crossing of



of the Granks Gap road and the Railroad a little east but near to the said Crossing. The Spring is now Covered up by the Railroad dump and is entirely destroyed. And further This deponent soith not.

Minrod <sup>his</sup> ~~X~~ Nae  
mark

The further taking of depositions in this Case are Continued until 4 O'clock P.M. this day at Jonesville Lee County Va

This Nov 20<sup>th</sup> 1891. H. C. Forslyn J.P.

Virginia Lee County To-wit:

I, Henry C. Forslyn a Justice of the Peace for the said County, do hereby Certify, that the foregoing depositions of D. R. Nae, Frank Bowman, W. M. Nae, Joseph Bowman, A. W. Nae, and Minrod Nae, were duly Taken, Sworn to and Subscribed before me, at the time and place mentioned in the Caption of the same. Given under my hand this 20<sup>th</sup> day of November 1891.

Henry C. Forslyn J.P.



L. & M. R. R. Co  
vs. 3 Depositions

Nimrod Nae

The depositions of  
B. R. Nae. Frank Bowman  
W. M. Nae Joseph Bowman  
A. W. Nae & Nimrod Nae.

Read from notes  
before whom taken  
and filed Nov. 21<sup>st</sup> 1899  
J. F. Hyatt

Defts Depo.

J. P. Fee \$2.25  
wit 3.00

Defts cost record

b 2.15-  
JP 2.25-  
wit 3.00  
A 15.00

\$22.40



Virginia, Lin County, to wit:

I, John M. Whitehead, Sr., do solemnly swear that I have been acquainted with the tract of land on which Nimrod now now lives and through which the Lenoirville & Nashville Road now passes for at least <sup>20</sup> twenty years; that I know where the right of way of said railroad runs through said land, and that I know ~~there is no~~ <sup>of no</sup> spring of water at any point on place in the right of way of said rail road that runs through said Nimrod's land, and this statement is made upon the fact that I once had (1862) an occasion to look for water in the vicinity of said right of way and found none, and I believe if any <sup>spring</sup> water had been in that vicinity, I should have found it. I have been frequently on said land since 1862 and up to the present have never seen any spring on or about said right of way. So help me God. This Dec. 12<sup>th</sup> 1890

J. M. Whitehead Sr



Virginia, in and to wit:

I, C. H. Huntington a notary public in and for the County of Lee and State of Virginia do hereby certify that J. M. Whitehead whose name is signed to the foregoing writing, having done on the 12th day of Dec., 1870, subscribed the same and made oath thereto before me in my County and State aforesaid on the 12th day of Dec., 1870.

Given under my hand this 12th 1870.

C. H. Huntington N. P.

Affidavit  
of  
J. M. Whitehead.



Virginia, Lee County, to wit:

I, W.B. Cells, do solemnly swear  
that, I am the resident engineer  
of the L. & N. R.R. Co., of that  
portion of said Company's work  
that runs through the land owned  
now by Nimrod Noe, and on which  
he now lives; that I went over  
the right of way of said rail-  
road that passes through said  
land before the construction  
of said Company's work, and know  
there was no spring of water  
on or at any point of the said  
Company's right of way over  
said Noe's land; I do further  
state and swear that all  
debris and loose <sup>of a damaging nature</sup> materials that  
were thrown out ~~out~~ on said  
Noe's land from said Company's  
works, have been removed off  
of said land, and that the same  
was done sometime before  
Nov. 1st 1890. So help me God. This  
Dec. 14th 1890. W.B. Cells



Virginia, Lee Co. To wit:

I E. H. Cunningham a notary public  
in and for Lee County and State of Virginia  
do certify that - W. B. Ellis whose name  
is signed to the writing above bearing date on  
the 12th day of Dec. 1890 subscribed the same  
and made both oaths before me in my County  
and State aforesaid in the 12th day of Dec. 1890  
himself under my hand this Dec. 2nd 1890

E. H. Cunningham N. P.

Affidavit  
of  
W. B. Ellis.



Virginia, Suo loco, to wit:-

I, O. O'Havran, do hereby solemnly  
swear that-I am acquainted with  
the lands of Nimrod Noe and that  
through which the L. & N. R. R. now  
passes and have known the same  
since before said R. R. Co. began  
its work over said Noe's land;  
that-I know there was no spring  
of water on the right-of-way of  
said company over said land;  
that-I know that all debris  
and <sup>of a damaging nature</sup> loose material, that was  
thrown out on said land from  
said company's work was removed  
before Nov. 1<sup>st</sup> 1890, and that  
said Noe's land is now and  
has been from the time aforesaid  
free from said debris & loose  
material. I hold me God  
This Dec. 12<sup>th</sup> 1890.

O. O'Havran



Virginia, Lee County, to wit:

I, E. H. Pennington, a notary public in  
and for the county of Lee and State of Virginia,  
do certify that O. D'Haven whose name  
is signed to the writing above, bearing  
date on the 12<sup>th</sup> day of Dec, 1890, subscribed  
the same and made oath thereto before  
me in my county and State aforesaid  
on the 12<sup>th</sup> day of Dec, 1890.

Given under my hand, this 12<sup>th</sup> day Dec, 1890  
E. H. Pennington N. P.

Affidavit  
of

O. D'Haven.



Virginia, Lee County, to wit:

I, A. C. Ely, do solemnly swear that I am acquainted with the tract of land on which Nimrod Aoe now lives and through which the P. & A. R.R. now passes; that my father once owned said tract of land and I lived on it with my father for about eleven years; that I have been shown the point where said Aoe claims that the said railroad destroyed a spring for him, that in all my acquaintance <sup>with said farm</sup> I never saw a spring at said point, or on the right of way through said Aoe's farm; and that to the best of my belief there never was a spring at said point as claimed by said Aoe.

So help me God. This Dec. 12, 1890.

A. C. Ely.



certify that Arthur L. Ely whose name is signed  
to the writing aforesaid and bearing date on the  
12<sup>th</sup> day of Dec., 1890, subscribed the same and  
made the same before me in my county and  
State aforesaid on Dec. 17<sup>th</sup> 1890. Since then  
see my hand this the 12<sup>th</sup> day of Dec., 1890.

W. H. Pennington W. R.

Affidavit  
of  
A. L. Ely.



Proceedings in Circuit Court

Virginia Lee County to wit:-

Dec. 18  
Timrod Nor plaintiff complains  
of the Louisville & Nashville Railroad,  
Dec. a body corporate, doing bus-  
iness in the State of Virginia,  
which has been summoned &c  
of a plea of trespass on the  
case, for this that the said  
plff, before and at the  
time of committing of the  
several grievances and tres-  
passes, hereinafter named,  
was and from thence, hitherto  
hath been and still is possessed  
of a certain farm, messuage  
tenement and close with its  
appurtenances, situated in  
the Poor Valley in the county aforesaid,  
wherein the plff resides.

On which said farm and close  
so situated as aforesaid, there  
were and still of right ought  
to be livings fences, gates, bars,  
and stables, outhouses, and build-  
ing, gardens, orchards, apple  
and peach trees &c, &c. on and  
upon said farm ~~tenement and~~  
close aforesaid.



And the said plff avers  
that the said defendant on  
the day of 1889, and on  
divers other days and times be-  
fore that time and since, up  
to the time of bringing this  
suit, with force and a mul-  
titude of people broke and  
entered said close of the  
plff aforesaid and then and  
there with force and a multi-  
tude of people, broke and entered  
said close of the plff, as aforesaid  
situated as aforesaid; and then  
and there with force and said  
people aforesaid broke and entered  
said close of the plff and then  
and there with the force and  
people aforesaid, broke open, tore  
down and destroyed, the plff's fences,  
rails, gates, barn, stable, horses, grain  
grain, garden, apple & peach trees  
growing crops of grain and garden  
stuff; and dug, excavated divers  
railroads, ditches, fills, embank-  
ments, cuts and culverts and  
trampled upon, and run over  
the plff's close with divers carts



horses, mules, men and wagons, run over, trampled upon, cut and destroyed the pelf close as aforesaid, and so built and constructed thereupon, the defund and, railroad, culverts, ditches and embankments, by daily and constantly hauling, dragging, plowing, scraping, digging and using the same in and over the lands tenements and close of the pelfs aforesaid, and by so doing letting in and upon said close, land & tenement of the pelf diverse hogs, sheep, cattle, & horses in and upon the said premises and so using and operating their said railroad, as aforesaid in and upon the said garden & premises, as to wholly burn up and destroy the pelf rails, gates, barn and buildings so situated as aforesaid. All of which said acts and doings were done without the leave or licence of and against the will of the



said plff for a long space  
of time, viz:- the time afore-  
said

And there by and therewith  
during all the time aforesaid  
greatly incumbered, and still  
so encumbered the said  
close and premises, and  
hinders and prevents, and  
so hinders and prevents the  
said plff from having the  
use, enjoyment and control  
thereof in so large and  
complete a manner as he  
right lawfully and otherwise  
would have had and done  
and other wrongs and inju-  
ries to the said plff then  
and there did to the plff  
damages \$2500.

hence suit &c

A. L. Pridemore  
& G

Memorandum of an agreement  
made and entered into this  
day by and between the  
Louisville & Nashville Railroad Company



1 Cumberland Valley Extension) of  
the first part and Nimrod  
Nor of the second part. Witness  
eth That whereas the said  
party of the first part have  
entered actively upon the con-  
struction of its roadway over  
and through the farm land and  
premises of the party of the second  
part and have heretofore con-  
voked the commissioners, appoin-  
ted by the County Court, to  
assess damages and condemn  
right of way on said land  
which report is now pending  
with exceptions thereto, in the  
County Court of Lee County, and  
whereas the said Nor has  
heretofore instituted in the  
circuit Court of ~~the~~ county an  
action on the same for damages  
done said premises as by  
alleges - now in order to  
settle finally now much  
damages said Nor is entitled  
to by reason of the construction  
of the said rail road, to the  
residue of the tract over



and above any peculiar advantages to be derived by him from the construction of said road as a just compensation for a strip of land over said farm 100 feet wide; and also the damage done by said company or its employees to said land by throwing dirt, rock and gravel or the like upon the premises outside the said strip of 100 feet.

It is agreed that A.B. Mussey, E.S. Woodward and Simpson B. Orr, who are hereby mutually selected for the purpose, shall go upon said land and after viewing the same & hearing such proof as either party may advance, assess, fix the amount that said Tor shall receive and said road pay by reason of the premises. And such award made by them or a majority of them shall fix said liability and be entered up as the judgment of the court in each



case & the report of the  
former courts condemning said  
right of way shall be confirmed  
when the same shall be paid.  
and the cause in the Circuit  
court be disposed of there  
according to the award made

A. L. Pridemore Atty for H. Co.

Apr. 9<sup>th</sup> 1890. C. T. Duncan Atty for L. Co.



Virginia

At a circuit Court contin-  
ued and held for Lee County  
at the Court House thereof  
September 3<sup>rd</sup> 1870.

Nimrod Noe

Plff.

vs

L. & N. R. R. Co. Deft

In Case

This day came again  
the parties by their attorneys  
and it appearing to the court  
that an agreement had been  
made and entered into between  
the parties, referring the settlement  
of all questions in this cause  
to arbitrators for final settlement,  
to wit: A. B. Menden, E. S. Hammond  
and S. B. Orr, and that said  
Arbitrators, have made and  
returned their award, it is  
therefore considered by the  
Court, that a rule be and  
is hereby awarded against  
the Defendant to appear here  
on the first day of the next term  
to show cause why the return of said Arbitrators



shall not be entered as the final  
order of the court in this case.  
The Plaintiff by his attorney  
reserving such rule as to him  
and the cause is continued.

And now at this day to wit: -  
At a circuit Court to continue to  
and held for Lee County at the  
Court house thereof on the 3<sup>rd</sup>  
day of December 1890.

Nimrod Vol      Plff  
vs      (In Case)  
L + H W. B. Co.      Deft

This day came again the  
parties by their attorneys, and  
thereupon the parties filed excep-  
tions to the award of the  
arbitrators filed in this case  
and said exceptions being ma-  
turally considered are overruled.

It is therefore considered  
by the Court, that, <sup>and the</sup> award  
of the arbitrators to whom the  
determination of the matters of  
the difference, between the parties  
were submitted by an agreement



have returned their awards  
in the following words and  
figures:

To the Honorable James H. Bre  
Lodge of the County Court of Lee  
County Virginia. We J. B. Murray  
Simpson R. Cox and Gilbert S. Woods  
past commissioners duly sworn  
and qualified hereby  
certify that on the 9<sup>th</sup> day of

May 1890, we met together on the  
land of Nimrod Cox, who is tenant  
and owner of the land proposed  
to be taken by the Louisville and  
Nashville Rail Road Company for  
its purpose and then and

now described to us as follows:  
to wit: a strip of land bounded  
and described as follows:— Begin  
ning at a point in the center  
line of the Cumberland Valley  
branch of the Louisville & Nash-  
ville Rail Road as now located  
where said center line crosses the  
division line of the lands of  
John Pennington and said  
Nimrod Cox the bearing of which  
line is S. 81° 50' W. thence by  
compass bearing N 78° 10' and



with a width of 50 feet on  
each side of said center line  
for a distance of 675 feet,  
thence with a width of 50 feet  
on the south and 60 feet on the  
north side of said center line  
containing said tangent for a  
distance of 700 feet, thence con-  
tinuing said tangent, and with  
a width of ~~said~~ <sup>east</sup> ~~south~~ 50 feet  
on each side of said center line  
for a distance of 260 feet to  
a line of the lands of H. M.  
for the benefit of which land  
in 1850 or thereabouts some  
and for use for the same  
more or less, and upon a view  
of the land aforesaid and upon  
such evidence as was before us,  
we ascertained, that for said  
land and <sup>the damages to</sup> the residue of the  
tract beyond the peculiar benefits  
to be derived in respect to such  
residue from the work to be con-  
structed to wit: the construction  
and operation of the Cumberland  
Valley Branch of the Louisville and  
Nashville Great Road over said



Land Five hundred dollars  
will be a just compensation  
as follows:- Value of the land  
taken \$232.50, Inconvenience from  
being cut off from water and de-  
struction of Spring House, Damages  
to the land from rock dirt &c  
being thrown upon the land  
outside of right of way and  
expense of clearing off by  
said to be 7.50 making in  
all the total of Five hundred  
dollars.

It is understood that the  
Rail Road Company is to fence  
the right of way on both sides  
and put up all cattle guards  
&c at its own expense as the  
law directs.

Commiss 2 days each \$2.50 - \$5.00.

A. B. Hunsley }  
J. B. Cox } Comm.  
C. S. Woodward }

It is therefore considered by  
the court that the foregoing  
award is and the same is  
hereby entered as the judgment  
of the Court, and that the Plaintiff



cover his cost by him in this  
suit expended from the said  
defendant.

A Copy

Teste J. A. G. Hyatt

**The Commonwealth of Virginia.**

**To The Sheriff Of Lee County Greeting:**

We Command You, That of the Goods and Chattels of L. & A. B. Road  
Company

late in your Bailiwick, you cause to be made \$ 900.00, with legal interest thereon from the 3rd  
day of December, 1890, till payment, which Amount  
is

lately in our Circuit Court of Lee County, has it recovered against it by suit for Damages  
Also, \$ 24.50, which to the said See

in our Court were adjudged for his costs in  
that behalf expended whereof the said L. & A. B. Road

Company is convicted, as appears to us of record. And that you have the  
same before the Judge of our said Court at the Court House on the first Monday in January  
next, to render to the said See

of the Damages and costs as aforesaid.

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.

This 10 day of Decr 1890, in the 11<sup>th</sup> year of the Commonwealth.  
J. A. G. Hyatt Clerk.

A Copy  
Teste J. A. G. Hyatt

615.70  
3 3.10  
Int. 8.50  
L & A 2.50  
Sub 15.00  
Total 84.80



J. R. O. Co.  
and 3 Copies of Green  
in Circuit Court  
Haverhill Nov

Fee for Copy 3.50  
This fee is paid



To The Honorable Judge of the county  
court of Lee County, Virginia.

We H. C. Joslyn, H. C. T. Richmond  
Thomas S. Ely Commissioners duly  
appointed and qualified, hereby certify  
that on the 24<sup>th</sup> day of October 1889,  
we met together on the land of which  
Kinrod Cox is tenant of the freehold  
and owner, proposed to be taken by  
the Louisville & Nashville Railroad  
company for its purpose and then and  
there described to us as follows: To wit:  
a strip of land bounded and described  
as follows, Beginning at a point in the  
center line of the Cumberland Valley  
branch of the Louisville & Nashville Rail-  
road as now located where said center  
line crosses the division line between  
the lands of John Pennington and the  
said Kinrod Cox the bearing of which  
line is S.  $21^{\circ} 52'$  W. thence by tangent bear-  
ing N  $74^{\circ} 9'$  W. and with a width of 50  
feet on each side of said center line  
for a distance of 675 feet thence  
with a width of 50 feet on the south  
and 60 feet on the north side of  
said center line continuing said  
tangent for a distance of 700 feet  
thence continuing said tangent



and with a width of 50 feet on each side  
of said center line for a distance of  
2604 feet to a line of the lands of  
Mr. M. Mac The bearing of which  
line is S 8° 50' west containing  $9\frac{3}{100}$   
acres be the same more or less.  
And upon a view of the land aforesaid  
and upon such evidence as was before  
us, we ascertain that for said land  
and for the damages to the residue  
of the tract beyond the peculiar  
benefits to be derived in respect  
to such residue from the work  
to be constructed, to wit: The con-  
struction and operation of the Cum-  
berland Valley Branch of the  
Louisville & Nashville Railroad  
over said land Three hundred  
& eleven  $\frac{20}{100}$  dollars will be a  
just compensation. Given under  
our hands, this 24th day of October  
1889.

H. C. Goodyear

H. C. T. Richmond } Commissioners

Thos. S. Ely }

Clerk John A. Gibson Clerk.



L. V. N. R. R. Co

25 } Copy of Comm. Report

Mineral & Co

Filed Dec 25<sup>th</sup> 1887.

J. R. Gibson & Co

Dec 25<sup>th</sup> 1887. Chas. H. 1887

Deposited amt \$311.22

1890 Jan 20<sup>th</sup>

" Feb. "

" Make Exceptions & etc.

" Affd by agreement

new comm. appointed

and cause continued.

May continued; June cont.

July, August, Sept & 7

Oct. continued & Rnd

as both parties.

Jan. 10<sup>th</sup> 1890.

Virginia Lee County to wit:

This report is excepted to -

- 1 Because the same was not filed until proceedings were instituted by the land owner in the circuit court.
- 2 for the reasons stated on the report of Silas Flanary & Joseph Paly see these reports.

A. L. Bridgman



KNOW ALL MEN BY THESE PRESENTS, That we

*Le. C. Duncan*  
*B. H. Sewell and George Holliday*  
are held and firmly bound unto the Commonwealth of Virginia, in the sum of

*Two Thousand* dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our homestead exemptions as to this obligation, and any claim, right, or privilege to discharge any liability arising under this bond, or by virtue of said office or trust, in any currency, funds, counter claims or offsets other than legal-tender currency of United States. Sealed with our seals, and dated *14<sup>th</sup>* day

*March*, one thousand eight hundred and *Ninety One*  
The Condition of The Above Obligation is Such, That whereas the above bound *Russell*

on

*and Nashville Rail Road Company*  
*its* bill in Chancery against *Nimrod Noe*

addressed to the Judge of the circuit court of the county of Lee, has obtained from the said Judge an injunction to injoin and restrain *the defendant and all others from proceeding to collect the judgment referred to in the bill till the further order of the court*

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until *it*, or some one for *it*, shall enter into a

bond, with good security, in the clerk's of of the said court, payable to the Commonwealth of Virginia, in the penalty of *Two Thousand*

Dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said *L. V. R. Road Co.* shall pay all such costs as may be awarded against *it*, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, or else to remain in full force and virtue.

Executed in the presence of

*Le. C. Duncan* (SEAL)  
*B. H. Sewell* (SEAL)  
*George Holliday* (SEAL)

In the Clerk's Office of the Circuit Court of the County of Lee

This day personally appeared before me J. A. G. Hyatt, clerk of the circuit court of the county of Lee and made oath that *they* estate, after the payment of all *their* just debts, and those for which he *they* are bound as security for others and expect to pay, *are* worth the sum of *Two Thousand* dollars, over and above exemptions allowed by law.

Given under my hand this *14<sup>th</sup>* day of *March*, 18*91*.  
Teste: *J. A. G. Hyatt* Clerk.







# The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon

*Nimrod Lee*

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday  
in *April* next, being rule day to answer a bill in Chancery exhibited in our said Court  
against *him* by *Louisville &*

*Warrshville R. R. Co.*

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.

This *14<sup>th</sup>* day of *March* 18*91*, in the 11<sup>th</sup> year of the Commonwealth.

*J. A. G. Hyatt* Clerk.

A Copy Teste



Mar 25

S

LD

L & N. R. R. Co.

no <sup>3</sup> Shwin they

Minrod to

To 1<sup>st</sup> April Rules 1891.

Executed March 25<sup>th</sup> 1891  
by delivering an office  
copy of The within  
Sums W. S. Sprinkle

Deft for A. B. Muncy  
S & C

The officer receiving this will certify  
the debt and all other proceedings  
to collect the judgment referred to  
the future action of the court  
the steps having executed & filed  
the bonds required  
J. B. Sprinkle



# The Commonwealth Of Virginia.

*Chorus Court Court*

To the Sheriff of Lee County Greeting: We command you to summon

*John M. Whitehead Arthur Cely to be Plaintiffs*  
and *J. Lynn Leamon*

to appear before the Judge of *me H.C. Joselyn*  
a Justice of Lee County at *W.T. Dunaway's office in Jonesville*  
our County Court, at the court house on the *13* day of the *November* 1891

~~Term~~ next to testify and the truth to speak in behalf *Plaintiff* in cer-  
tain matters of controversy pending in *The Circuit Court of Lee County* ~~our said court~~ between

*The Louisville & Nashville R R Co* Plaintiff, and

*Harrod Roe* Defendant.

And this *they* shall in no wise omit under the penalty of Twenty Dollars. And

have then and there this writ. Witness, John R. Gibson clerk of our said court at

the court house, the ~~day of~~ *189*, in the ~~year of the Com-~~

~~monwealth.~~ *Given under my hand this 11<sup>th</sup> day of Nov 1891*

*H.C. Joselyn* Clerk.



L + N R R 60

No. 3 Spa

Arrived Nov

To 13. November 1891

Executed by surgeon  
Arthur Ely. J M White  
head & C. C. Blandin  
Ship not executed on  
J. T. Coomer he not  
being found. This 11<sup>th</sup>  
day of Nov 1891

C E Chuk C C C.